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EXAMINER
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MURDOUGH, JOSHUA A

ART UNIT	PAPER NUMBER
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3621

NOTIFICATION DATE	DELIVERY MODE
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09/29/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 09/159,503	<b>Applicant(s)</b> BARRY ET AL.	
	<b>Examiner</b> JOSHUA MURDOUGH	<b>Art Unit</b> 3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 97-115 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 97-115 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/28/2008</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Acknowledgements***

1. In view of the appeal brief filed on 31 January 2008, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 C.F.R. §1.11; or,

(2) initiate a new appeal by filing a notice of appeal under 37 C.F.R. §41.31 followed by an appeal brief under 37 C.F.R. §41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 C.F.R. §41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

2. The Examiner for this application has changed. Please note that Joshua Murdough is the Examiner of record in any future correspondence.

3. Claims 97-115 are pending and have been examined.

### ***Specification***

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 C.F.R. §1.75(d)(1) and MPEP § 608.01(o). The specification is replete with these errors. Some examples follow:

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- a. “enterprise communications network” in at least claim 97;
- b. “object oriented protocol” in at least claim 97;
- c. “network entitlements” in at least claim 97;
- d. “proxy generation” in at least claim 97;
- e. “proxy request” in at least claim 97
- f. “switched voice traffic resources” in at least claim 97;
- g. “switched data traffic resources” in at least claim 97;
- h. “switched toll free voice traffic resources” in at least claim 98;
- i. “switched call center voice traffic resources” in at least claim 99;
- j. “switched toll traffic” in at least claim 100;
- k. “switched voice communications” in at least claim 101;
- l. “real time reporter” in at least claim 102;
- m. “in-box manager application” in at least claim 105;
- n. “priced call application” in at least claim 106;
- o. “broadband view application” in at least claim 107;
- p. “in-box application” in at least claim 108;
- q. “event monitor application” in at least claim 109;
- r. “single order entry application” in at least claim 111;
- s. “E-billing application” in at least claim 112;
- t. “client view application” in at least claim 113;
- u. “pre-selected calls” in at least claim 114;
- v. “invoice generation” in at least claim 114; and

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- w. “view application” in at least claim 115.

***Claim Objections***

***Claim Rejections - 35 USC § 112 1<sup>st</sup> Paragraph***

- 5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- 6. Claims 97-115 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

- 7. The following is not disclosed in the original specification:

- x. “proxy generation” in at least claims 97, 110, and 115;
- y. “proxy request” in at least claims 97, 110, and 115;
- z. “pre-selected calls” in at least claim 114; and
- aa. “invoice generation” in at least claim 114.

- 8. If Applicants can cite passages from the specification with sufficient detail as to how the applicable generation, request, or selection is performed, the corresponding rejections will be withdrawn.

***Claim Rejections - 35 USC § 112 2<sup>nd</sup> Paragraph***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 97-115 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claims 97 and 110 recite the limitation "said secure server." There is insufficient antecedent basis for this limitation in the claims. The Examiner has interpreted this to reference the "at least one secure web server" in line 11. However, there is potentially a plurality of servers and it is not clear which one is being referred to. To properly reference this, the limitation should recite "said at least one secure web server."

12. Claims 97 and 110 also recite the limitation "after said customer's entitlements have been verified." One of ordinary skill in the art would not be able to determine the corresponding structure for this limitation. However, this limitation appears to be part of the intended use of the dispatch server. If Applicants state on the record that this limitation is intended use, this rejection will be withdrawn.

13. Claims 97 and 110 further recite "providing session management for the customer, said session management including customer identification, validation, entitlements, and encryption." One of ordinary skill in the art would not be able to determine the corresponding structure for this limitation. However, this limitation appears to be part of the intended use of the secure web server. If Applicants state on the record that this limitation is intended use, this rejection will be withdrawn.

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14. Finally, claims 97 and 110 recite “a plurality of system resources.” There are at least three possible interpretations for this phrase. First, it could be meant as it is on the Macintosh, where system resources are any of numerous routines, definitions, and data fragments that are stored in the Macintosh System file. Second, it could refer to items of data or code that can be used by more than one program or in more than one place in a program. Third, it could also be part of a computer system or network, such as a disk drive, printer or memory, that can be allotted to a program or process while it is running. See the definitions of “system resource” and “resource” below. As at least some of the resources are set out as being software, network manager and view application, the Examiner has interpreted system resources to be software.

15. Claim 105 recites the limitation “in-box manager application” in line 5. One of ordinary skill in the art would not understand what is meant by this phrase, as there are at least two distinct interpretations. First, it could be interpreted to mean that the application is stored on the system, or box, where it is executed. Second, it could refer to an inbox such as where new emails are stored. For purposes of prior art, the Examiner has interpreted this to be the former.

16. Claim 108 recites the limitation “in-box application” in lines 2-3. One of ordinary skill in the art would not understand what is meant by this phrase, as there are at least two distinct interpretations. First, it could be interpreted to mean that the application is stored on the system, or box, where it is executed. Second, it could refer to an inbox such as where new emails are stored. For purposes of prior art, the Examiner has interpreted this to be the former.

17. Claim 109 recites the limitation “forwarding alarms generated” in line 3. There is insufficient antecedent basis for this limitation in the claim. There is no previous reference to

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generating an alarm. For purposes of prior art, the alarm has been interpreted to be a notice or alert.

18. Claim 110 also recites the limitation “after said customer’s entitlements have been verified” in lines 16-17. One of ordinary skill in the art would not be able to determine the corresponding structure for this limitation. However, this limitation appears to be part of the intended use of the dispatch server. If Applicants state on the record that this limitation is intended use, this rejection will be withdrawn.

19. Claim 110 further recites “providing session management for the customer, said session management including customer identification, validation, entitlements, and encryption” in lines 11-12. One of ordinary skill in the art would not be able to determine the corresponding structure for this limitation. However, this limitation appears to be part of the intended use of the secure web server. If Applicants state on the record that this limitation is intended use, this rejection will be withdrawn.

20. Claim 115 recites the limitation “said system” in line 7. There is insufficient antecedent basis for this limitation in the claim. Claim 115 is an independent claim and nowhere previous to line 7 is anything referred to as being a system.

### ***Claim Rejections - 35 USC § 103***

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



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22. Claims 97-115, as best understood, are rejected under 35 U.S.C. §103(a) as being unpatentable over Archer (US 6,683,870) in view of McNair (US 4,608,455).

23. As to claims 97 and 110, Archer shows:

bb. An integrated and secure system for conducting business over the public Internet by enabling a customer of an enterprise communications network to command and control the customer's switched communications connections within the network over the public Internet and to view results of any changes in the customer's connections over the public Internet, said system comprising:

cc. an object oriented protocol (Internet Protocol, "IP", within "IP Network" 130) for enabling interactive communications between said system and said customer (subscriber) over the public Internet ("connected via telephone lines to an Internet service provider," Columns 7-8, lines 64-11), said protocol invoked within a web browser ("Netscape Navigator" on 134b, Columns 7-8, lines 64-11) executed by a workstation **134b** associated with the customer to support customer identification (through an identification code, Column 8, lines 50-56), authentication and network entitlements (Columns 8-9, lines 61-9);

dd. at least one web server **128a** for managing customer sessions over the public Internet, said server providing session management for the customer (Column 9, lines 31-37), said session management including customer identification (through an identification code, Column 8, lines 50-56), validation (Columns 8-9, lines 61-9), and entitlements (Columns 8-9, lines 61-9); and

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ee. at least one dispatch server **128b** for communicating with said secure web server and a plurality of system resources (items 140, 142, 146, 120, and 132) said dispatch server providing verification of system access and proxy generation for said system resources (Columns 8-9, lines 61-9) after said customer's entitlements have been verified (compared with entries stored in database 138);

ff. said plurality of system resources including a network manager **140** which manages routing of the customer's traffic over the communications network (Column 4, lines 17-30), and a view application to review network traffic (Column 5, lines 47-58), said network manager and said view application responsive to proxy requests from said dispatch server to enable the customer to command and control (Column 2, lines 35-50) switched voice traffic resources and switched data traffic resources (Column 9, lines 62-67) provided by the enterprise to the customer.

gg. the system operates in near real time (Column 11, lines 36-43)

24. Archer does not expressly show the use of encryption or that the web server is secure. However, McNair shows how to encrypt voice and data communications (Column 1, lines 6-10), in order to provide more secure communications. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Archer to encrypt the communications as done by McNair because it allows for the detection and correction of bit errors (Column 1, lines 36-57).

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25. As to claim 115, the same basis relied on for claims 97 and 110 is used to reject this claim as well. This claim recites “providing” the different components that were set out in the rejection above. As the system is shown, the Examiner’s position is that the system has been provided.

26. As to claims 98-100 and 111, the claimed differences would not require any structural differences and are therefore rejected under the same basis as claims 97 and 110.

27. As to claims 101 and 113, Archer further shows:

said view application includes a reporter responsive to proxy requests from said dispatch server to enable the customer to generate reports on switched voice communications in said network (Column 2, lines 48-50).

28. As to claim 102, Archer further shows:

said reporter for generating reports on the switched voice communications in said network includes a real time reporter for generating reports on network traffic in near real time (As the reporting is combined with the communication, when the communication is in real time, so is the reporting; Column 11, lines 36-43).

29. As to claim 103, Archer further shows:

wherein said reporter for generating reports on the switched voice communications in said network includes a real time reporter for generating reports on outbound network traffic in

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near real time (As the reporting is combined with the communication, when the communication is in real time, so is the reporting; Column 11, lines 36-43).

30. As to claims 104 and 114, Archer further shows:

said reporter for generating reports on the switched voice communications in said network includes a reporter for generating history reports on said switched voice communications occurring during preselected periods of time (while not expressly showing reports being generated for preselected periods of time, the necessary data is shown, therefore the system is enabling or capable of generating these reports. Column 7, lines 29-42).

31. As to claim 105, Archer further shows:

said reporter for generating reports on the switched voice communications in said network includes a report manager application for enabling a customer to generate reports for a plurality of switched voice communication applications and an in-box manager application for communicating the reports to the customer (the reports are generated locally at both ends and are transmitted to the opposite end; Column 11, lines 36-43).

32. As to claim 106, Archer further shows:

said reporter for generating reports on the switched voice communications in said network includes a priced call application for enabling a customer to generate priced reports and invoices for a plurality of switched voice communication applications (Column 7, lines 29-42).

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33. As to claim 107, Archer further shows:

said customer's switched communications connections includes switched data traffic connections and said view application includes a broadband view application for generating reports on data relating to switched data traffic (Column 2, lines 48-50).

34. As to claim 108, Archer further shows:

said system includes an in-box application for storing and forwarding reports to the customer on data relating to the customer's switched voice and data traffic (the reports are generated locally at both ends and are transmitted to the opposite end; Column 11, lines 36-43).

35. As to claim 109, Archer further shows:

said system includes an event monitor application for storing and forwarding alarms generated with respect to the customer's traffic over the communications network (Column 9, lines 10-23).

36. As to claim 112, Archer further shows:

said system further comprises an E-Billing application which enables electronic business transactions to pay for said services, said order entry and E-Billing applications responsive to proxy requests from said dispatch server to enable the customer to manage and pay for the communications network services provided by the enterprise (Column 7, lines 29-42).

***Claim Interpretations***

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37. Claims 97-114 are understood to be apparatus claims. As such, they are subject to interpretation as outlined by MPEP § 2114, wherein it says, “While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function” and “[A]pparatus claims cover what a device is, not what a device does.” While the Examiner has cited references for many of the functional limitations that do not require an alteration of the structure for purposes of compact prosecution, it is his principal position that these elements do not need to be shown in order to show anticipation. It is suggested that the claims be amended to clearly show the structural elements to prevent issues associated with this type of interpretation. It is noted that this may also resolve some of the 35 U.S.C. 112 2<sup>nd</sup> paragraph issues as well.

38. In addition to being functional limitations, many of the limitations also set out the intended use of the structures. As per MPEP § 2106 II (C), language that suggests or makes optional but does not require the steps to be performed, such as statements of intended use or field of use, are given less patentable weight. Words such as “for,” “to,” and “enable” can indicate intended use. Therefore it is the Examiner’s position that when one of these words follows a structure, and precedes a function, the function is the intended use. In order to give these claim limitations more patentable weight, Applicants are advised to make these limitations positive by showing that the functions are performed. For the most weight to be given to the limitations, the Examiner suggests reciting that the structural components are programmed to perform the functions. If this is done, the program would be considered structure for claim interpretation.

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39. In regards to claim 115, which is a method, the function issues do not apply. However, the intended use issues do apply. As currently claimed, the method comprises providing, or making usable: an object oriented protocol, a secure web server, a dispatch server, and a plurality of system resources with various intended uses. To reiterate, the claim is directed toward making the components available, and not to the use of the components. The Examiner suggests that Applicants avoid using the word "providing" when referring to the structural components. Also, the Examiner suggests emphasizing the actions in a method claim instead of the structure as is currently the case in claim 115.

40. For example, the limitation, "providing at least one secure web server to manage secure customer sessions over the public Internet, said secure server providing session management for the customer, said session management including customer identification, validation, entitlements and encryption;" as currently recited in claim 115, would more clearly show the invention and be given more patentable weight if it were recited as, "managing secure customer service sessions over the public Internet provided for the customer by at least one secure server, said managing of secure customer service sessions including customer identification, validation, entitlements and encryption;"

41. As to the functional or intended use limitations not being shown in the references, the Examiner's position is that if they are amended to be positive limitations as noted above, the claims would probably distinguish over the prior art. Moreover, if the other issues associated with the application are also resolved, through adequate traversal or amendment, an allowance of at least some of the claims would be likely.

### ***Definitions***

42. To the extent that the Examiner's interpretations are in dispute with Applicants' interpretations, the Examiner hereby adopts the following definitions—under the broadest reasonable interpretation standard—in all his claim interpretations.<sup>1</sup> Moreover, while the following list is provided in accordance with *In re Morris* (127F.3d 1048, 44 USPQ2d 1023 (Fed. Cir 1997)), the definitions are a guide to claim terminology since claim terms must be interpreted in context of the surrounding claim language. Finally, the following list is not intended to be exhaustive in any way:

- hh. ***Server***: “2. On the Internet or other network, a computer or program that responds to commands from a client.” Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997.
- ii. ***Protocol***: “See communications protocol.” Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997.
- jj. ***Communications protocol***: “A set of rules or standards designed to enable computers to connect with one another and to exchange information with as little error as possible. The protocol generally accepted for standardizing overall computer communications is a seven-layer set of hardware and software guidelines known as the OSI (Open Systems Interconnection) model. The word *protocol* is often used, sometimes confusingly, in reference to a multitude of standards affecting different aspects of communication, such as file transfer (for example, XMODEM and ZMODEM),

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<sup>1</sup> While most definition(s) are cited because these terms are found in the claims, the Examiner may have provided additional definition(s) to help interpret words, phrases, or concepts found in the definitions themselves or in the prior art.



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handshaking (for example, XON/XOFF), and network transmissions (for example, CSMA/CD).” Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997.

kk. **Application:** “A program designed to assist in the performance of a specific task, such as word processing, accounting, or inventory management. *Compare* utility.”

Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997.

ll. **Utility:** “A program designed to perform a particular function; the term usually refers to software that solves narrowly focused problems or those related to computer system management.” Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997.

mm. **Object-oriented:** “Of, pertaining to, or being a system or language that supports the use of objects. *See also* object (definition 2).” Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997.

nn. **Object:** “2. In object-oriented programming, a variable comprising both routines and data that is treated as a discrete entity.” Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997.

oo. **Routine:** “Any section of code that can be invoked (executed) within a program. A routine usually has a name (identifier) associated with it and is executed by referencing that name.” Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997.

pp. **Web browser:** “A client application that enables a user to view HTML documents on the World Wide Web, another network, or the user’s computer; follow the hyperlinks among them; and transfer files.” Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997.

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qq. ***Invoke***: “To call or activate; used in reference to commands and subroutines.”

Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997.

rr. ***System resource***: “On the Macintosh, any of numerous routines, definitions, and data fragments that are stored in the Macintosh System file, such as floating-point arithmetic routines, font definitions, and peripheral drivers. *See also* resource (definition 2).” Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997.

ss. ***Resource***: “1. Any part of a computer system or network, such as a disk drive, printer or memory, that can be allotted to a program or process while it is running. 2. An item of data or code that can be used by more than one program or in more than one place in a program, such as a dialog box, a sound effect, or a font in a windowing environment.” Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997.

tt. ***Enable***: “1 a : to provide with the means or opportunity... b : to make possible, practical or easy” Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield MA, 1986.

uu. ***For***: “1 a -- used as a function word to indicate purpose... b -- used as a function word to indicate an intended goal” Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield MA, 1986.

vv. ***Provide***: “2 a : to supply or make available (something wanted or needed)” Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield MA, 1986.

ww. ***Available***: “3 : present or ready for immediate use 4 : ACCESSABLE, OBTAINABLE... 6 : present in such chemical or physical form as to be useable (as by a

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plant)” Webster's Ninth New Collegiate Dictionary, Merriam-Webster Inc., Springfield MA, 1986.

### ***Double Patenting***

43. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 C.F.R. §3.73(b).

44. Claims 97-115 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,381,644. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application represents the genus of the species that was allowed in the '644 patent.

45. Claims 97-115 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,377,993. Although the conflicting claims are not identical, they are not patentably distinct from each other because the concept of the inventions is the same; however the exact wording is different. Also, the '993 patent contains extra limitations not required in the instant application.

46. Claims 97-115 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,385,644. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only substantive difference between the two sets of claims is in relation to the type of communication supported (voice or data), which would be an obvious modification.

47. Claims 97-114 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,470,386. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences occur in the functional aspects and, as discussed above, patentability in system claims is derived from the structure not the function.

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48. Claims 97-114 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,490,620. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences occur in the functional aspects and, as discussed above, patentability in system claims is derived from the structure not the function.

49. Claims 97-115 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,574,661. Although the conflicting claims are not identical, they are not patentably distinct from each other because the concept of the inventions is the same; however the exact wording is different. Also, the '661 patent contains extra limitations not required in the instant application.

50. Claims 97-114 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,598,167. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences occur in the functional aspects and, as discussed above, patentability in system claims is derived from the structure not the function.

51. Claims 97-115 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6,606,708. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application represents the genus of the species that was allowed in the '708 patent.

52. Claims 97-115 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-73 of U.S. Patent No. 6,611,498. Although the conflicting claims are not identical, they are not patentably distinct from each other because the

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concept of the inventions is the same; however the exact wording is different. Also, the '498 patent contains extra limitations not required in the instant application.

53. Claims 97-114 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,745,229. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences occur in the functional aspects and, as discussed above, patentability in system claims is derived from the structure not the function.

54. Claims 97-115 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,763,376. Although the conflicting claims are not identical, they are not patentably distinct from each other because the concept of the inventions is the same; however the exact wording is different. Claim 1 of the '376 patent and claim 98 of the instant application directly correspond to each other.

55. Claims 97-115 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,968,571. Although the conflicting claims are not identical, they are not patentably distinct from each other because the concept of the inventions is the same; however the exact wording is different.

56. Claims 97-114 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 7,058,600. Although the conflicting claims are not identical, they are not patentably distinct from each other because the differences occur in the functional aspects and, as discussed above, patentability in system claims is derived from the structure not the function.

***Response to Arguments***

57. Applicant's arguments filed 31 January 2008 have been fully considered but they are not persuasive.

58. Applicants argue:

“With respect to claim 97, the Final Office Action has not addressed the functional claim language and also has not indicated that the recited functions are somehow inherent in either Cohn or Archer, taken singly or in combination.” (Appeal Brief, page 12, Paragraph 2)

59. Examiner's response:

In response to applicant's argument that “to command and control switched voice traffic resources and switched data traffic resources provided by the enterprise to the customer,” a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Therefore, a statement that the structural components are capable of performing the intended use is needed, not a statement that it is inherent, as argued by Applicants. The statement that "Archer, for example, is sufficient in terms of prior art" can be found on page 3 of the previous Office Action.

The Examiner acknowledges that a similar argument is made in reference to other claims, however the same reasoning applies to all of these and therefore has not addressed all of them individually.

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60. Applicants argue:

“Cohn does not even mentions call centers, much less a call manager application responsive to proxy requests from said dispatch server to enable the customer to command and control the routing of switched voice traffic between call centers, as required by claim 99.”

(Appeal Brief, Page 15, partial paragraph)

61. Examiner's response:

It is the Examiner's position that, since there is no statement as to how the routing of switched call center voice traffic resources is any different than the routing of switched voice traffic resources in Applicant's specification, that the only difference is in the data contained within them. Therefore, the same system would be able to handle both. Thus, there is no structural difference.

62. Applicants' other arguments in regards to the application of the references have been considered, but the Examiner has modified the citations in the art rejections to address these arguments.



***Conclusion***

63. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

64. Giancarlo (US 4,768,190) shows an early system for using packets for voice communications.

65. Staples (US 5,764,639) shows a remote voice and data communication system.

66. See (US 6,874,090) shows network authentication before providing access to resources.

67. TimBL ("Basic HTTP as defined in 1992") shows that HTTP is an object oriented protocol and the relation of HTTP and IP.

68. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA MURDOUGH whose telephone number is (571)270-3270. The examiner can normally be reached on Monday - Thursday, 7:00 a.m. - 5:00 p.m.

69. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on (571) 272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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70. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

J. M.

Examiner, Art Unit 3621

/ANDREW J. FISCHER/

Supervisory Patent Examiner, Art Unit 3621